J. P. HOUCK TANNING CO. *v.* CLINEDINST.

Nov. 11, 1915.

[86 S. E. 851.]

1. Contracts (§ 247*)—Subsequent Changes—Evidence.—The defendant contracted with a lumber company to purchase bark; the lumber company agreeing to extend tracks and furnish cars for hauling the bark. The plaintiff thereafter contracted with defendant to peel the bark and load it on tram cars furnished. Through delay in furnishing cars by the lumber company, two handlings of the bark were required, increasing the expense of the plaintiff, for which he seeks recovery. Held that, while the defendant did not guarantee the furnishing of cars in time, the fact that the delay increased plaintiff's expense tends to support plaintiff's allegation of a subsequent oral agreement for increased remuneration for loading the bark.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1139, 1787; Dec. Dig. § 247.* 3 Va.-W. Va. Enc. Dig. 415.]

2. Contracts (§ 322*)—Breach—Evidence.—Evidence held sufficient to sustain a finding of the jury for the plaintiff in an action on the breach of contract.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1306, 1307, 1339, 1347, 1348, 1465, 1492, 1534-1542, 1754, 1768, 1772, 1801, 1802, 1804-1808, 1815, 1816; Dec. Dig. § 322.* 3 Va.-W. Va. Enc. Dig. 437.]

3. Evidence (§ 445*)—Parol Evidence—Varying Written Contracts.—The parol evidence rule prohibiting introduction of oral evidence to vary the terms of a written contract has no application in a case where the plaintiff alleges a second and oral agreement after the written agreement.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2052-2065; Dec. Dig. § 445.* 10 Va.-W. Va. Enc. Dig. 646.]

Error to Circuit Court, Amherst County.

Proceedings by C. C. Clinedinst against the J. P. Houck Tanning Company. From a judgment for plaintiff, defendant brings error. Affirmed.

Sipe & Harris, of Harrisonburg, for plaintiff in error.

J. B. Stephenson and *Chas. A. Hammer,* both of Harrisonburg, for defendant in error.

FORD *v.* ENGLEMAN et al.

Nov. 11, 1915.

[86 S. E. 852.]

1. Contracts (§ 95*)—Validity of Assent—Duress.—Duress will

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

not vitiate a contract, unless it is sufficient to overcome the will of a man of ordinary firmness and courage.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 431-440; Dec. Dig. § 95.*]

2. Words and Phrases—"Reasonable Diligence."—"Reasonable diligence" means such diligence as an ordinary person would exercise under similar circumstances (citing Words and Phrases, vol. 7, p. 5958).

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Reasonable Diligence.*]

3. Words and Phrases—"Ordinary Persons."—"Ordinary persons," in common parlance, means men of ordinary care and diligence in relation to any particular thing.

4. Words and Phrases—"Ordinary Neglect."—"Ordinary neglect" means want of that care and diligence which prudent men usually bestow on their own concerns, or such neglect as would not be suffered by men of prudence and discretion (citing Words and Phrases, vol. 6, pp. 5046, 5047).

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Ordinary Neglect.*]

5. Contracts (§ 99*)—Duress—Sufficiency of Evidence.—Duress, being a species of fraud, must be clearly proved.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 448-453, 1197-1199, 1799, 1800; Dec. Dig. § 99.* 4 Va.-W. Va. Enc. Dig. 841.]

6. Bills and Notes (§ 520*)—Seduction—Duress—Sufficiency of Evidence.—In an action by the maker to restrain the collection of notes alleged to have been executed under threats of prosecution for seduction, evidence held insufficient to establish duress per minas.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1813, 1832, 1836, 1837; Dec. Dig. § 520.*]

7. Bills and Notes (§ 94*)—Consideration—Release of Promise to Marry.—Where plaintiff, having seduced his fiancée, executed and delivered certain notes to her under a contract whereby she released him from all claims arising from the seduction, "or from any other and all claim, claims, or demands" against him, there was a release from his promise of marriage constituting a sufficient consideration for the notes.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 166-173, 175-181, 185-189, 192, 193, 196-198, 200, 202-207, 212; Dec. Dig. § 94.*]

Appeal from Circuit Court, Rockbridge County.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Bill in equity by Charles P. and O. T. Engleman against Lillian Ford. From a decree for plaintiff, defendant appeals. Reversed.

Hugh White, of Lexington, for appellant.
Timberlake & Nelson, of Staunton, for appellees.

HURLEY *v.* SHORTRIDGE et al.

Nov. 1, 1915.

[86 S. E. 858.]

1. Evidence (§ 460*)—Parol Evidence—Lost Corners.—Parol evidence by a former owner to determine the location of a corner called for in a patent of land is not inadmissible as altering the terms of a written instrument.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2115-2128; Dec. Dig. § 460.* 10 Va.-W. Va. Enc. Dig. 646.]

2. Boundaries (§ 41*)—Instructions—Misleading Instructions.—In ejectment, where the disputed question was the location of a corner stake as called for by a patent, an instruction, given at plaintiff's instance, that the jury might "determine the true location of the last stake called for in a patent named and should locate the land conveyed by said deed so that one line thereof shall run from a point in the river opposite said stake straight up the hill to said stake," and an instruction, given at defendants' instance, that if the jury believed from the evidence of the former owner of the land that he located the last stake in the patent at the blazed tree shown in evidence and that the owner of the patent, at the request or by permission of the former owner of the land in question, designated the place by blazing or marking the tree, and that the stake as thus located was the stake that the former owner of the land called for in his deed to defendant, then they will find this to be the true location of the stake called for in the deed, were not antagonistic and misleading, since the court was presenting the theories of the opposing parties.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 205-207; Dec. Dig. § 41.* 2 Va.-W. Va. Enc. Dig. 581.]

3. Trial (§ 253*)—Instructions—Ignoring Evidence.—An instruction in ejectment requiring the jury, upon the ascertainment of certain facts set out therein, to find for plaintiff, but omitting all reference to the evidence with respect to the claim of defendants, was erroneous.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 613-623; Dec. Dig. § 253.*]

Error to Circuit Court, Buchanan County.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.